**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION.**

**WRIT PETITION NO. 10059 OF 2004**

Vasantrao Dynanoba Chavan )
Age 56 years, Occupation: Barber,)
having its address at Gala No.19,)
C.S.No.845, E Ward, 4th Lane, )
Shahupuri, Kolhapur. )... Petitioner

versus

Smt. Dulabai Raosaheb Patil )
since deceased through her )
legal heirs )
1-A Meena Rajendra Kharade & ors.).... Respondents.

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Shri P.D.Salvi for the petitioner.

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**CORAM ; R.M.S. KHANDEPARKAR, J.**

**DATED; 20TH DECEMBER, 2004.**

**ORAL ORDER;**

1. Heard. Perused the records.

2. The petitioner challenges the decree of eviction passed against the petitioner on the ground of default in complying with its obligation to pay and deposit the rent regularly in the course of hearing of the matter, in the suit for eviction. Though the trial court has dismissed the suit, the lower appellate court has

observed that, the suit was dismissed in April 1997. However the petitioner had failed to deposit and pay the rent since February 1987 onwards and after filing of the appeal, the petitioner filed an application dated 8-12-1997 praying leave to deposit the rent for seven months during the pendency of the appeal, which was allowed but petitioner did not deposit the rent over a period of four years and it is only on 26th July 2001, the petitioner sought permission to pay or deposit the rent for the period from June 1997 to August 2001. Even thereafter the petitioner failed to pay or deposit the rent for over a period of three years and the said rent was deposited only on 8-1-2004. Relying upon the judgments of the Apex Court in the matter of **Mranalini B. Shah Vs. R.M.Shah reported in AIR 1980 S.C. page 954 and Jamnadas Vs. Dr. Joseph reported in AIR 1980 S.C.page 1605** the lower appellate court allowed the appeal and decreed the suit for eviction.

3. The decree is sought to be challenged firstly: on the ground that there was no cause of action for filing the suit for eviction on the ground of default in payment of rent as the notice, which was issued allegedly under section 12(2) of the Rent Act was not in relation to the arrears pertaining to the standard

rent. In that regard it is sought to be contended that the notice was for a demand of Rs. 75/- per month. However, in the course of recording of evidence, there is a clear admission by the landlord that the standard rent was never fixed in relation to the suit premises. Attention is sought to be drawn in that regard to the testimony of the respondent recorded in the course of the trial. The testimony disclosses that initially the rent in relation to the suit premises was fixed at Rs. 25/- per month about 25 years back. However, though there were no proceedings initiated to fix the standard rent, the rent was increased to Rs. 75/- per month, considering the tax levied by the Corporation, and that the said increase was not done suddenly but by a gradual proceess of increasing the same to Rs 30/- from Rs. 25/-, further to Rs. 40/-, then to Rs.50/- and ultimately to Rs. 75/- per month. It is pertinent to note that there was neither the case pleaded in the written statement nor it was suggested to the respondent while he was in the witness box that the amount of Rs. 75/- was not agreed upon between the parties. It is also not in dispute that the petitioner did not file any application under section 11(3), persuant to receipt of notice under Sec. 12(2) of the Rent Act. Undoubtedly, the petitioner did plead in the written statement that there was no standard rent fixed

in the matter.

4. Reliance is sought to be placed in the unreported decision delivered by me in the matter of **Sou, Kamalabai Bajirao Gaikwad Vs. Khatik Samaj in Writ Petition No.5414 of 1991 delivered on October 25, 2004** wherein it was held that notice under section 12(2) of the Rent Act should essentially relate to the arrears relating to the standard rent and/or the permitted increases. But it is to be noted that, simulteneously, it was held in the said decision that the standard rent would necessarily be either the agreed rent in terms of clause (b) of section 5(10) or the rent which is fixed as standard rent by the court under section 11 of the said Act. Being so, if the parties agree for a certain amount to be the rent for the leased premises and the tenant does not dispute it to be the standard rent, even after receipt of notice under section 12(2) of the Rent Act, there could hardly be any occasion for the court to deal with the issue of the standard rent and for all purpose agreed rent amount would be construed as the stanard rent, till it is otherwise decided in due course of law.

5. The amount of Rs. 75/- as demanded by the landlord, as the rent for premises was never objected

to by the petitioner. The petitioner did not object to pay or deposit the said amount of rent, and therefore it goes without saying that it was an agreed amount of rent in relation to the said premises and therefore on the day when the notice under section 12(2) was issued, it was the standard rent in relation to the suit premises. Being so, the first ground of challenge that there was no standrard rent fixed in relation to the suit premises, and therefore there was no cause of action for issuing the notice under section 12(2) and for the same reason there was no cause of action for filing the eviction proceedings, is devoid of any substance.

6. The impugned order is also challenged on the ground that once the suit is dismissed, in case of any default thereafter, it would be a fresh cause of action and it would not entitled the court to exercise the powers under section 12(3) for ordering the eviction of the tenant. Reliance is placed in that regard in the matter of **Hasan Alam Beg Jamdar Vs. Sardar Begum Usman Dabir & anr. reported in 1997(2) Mh.L.J. page 173.** In the said case it was revealed that the tenant had filed an application within 30 days from the date of receipt of notice under section 12(2) for fixation of the standard rent and the trial court having held that

there was no default committed in payment of rent, had dismissed the suit. In those circumstances of the case, it was also held that during the pendency of appeal preferred by the landlord, there was no question of tenant abiding by any conditions of section 12(3)(b) in as much as the tenant was already held not to be a defaulter and the suit on that count was dismissed. It was also held that if there was any subsequent default during the pendency of appeal, the landlord would get a fresh cause of action for which he could serve a notice of demand as contemplated under the provisions of law and proceed against the tenant.

7. Section 12(3) in the Rent Act clearly contemplates an obligation on the part of the tenant to pay the rent regularly during the pendency of the proceedings and any failure in that regard would entitle the landlord to get the eviction order. The said provision therefore clearly requires payment of rent regularly till suit is finally decided. It is well settled that an appeal is a continuation of the suit. Obviously, therefore the regular payment is expected not only during the pendency of the proceedings before the trial court but also before the appellate court. This aspect nowhere appears to have been considered in Hasan Alam's case. Besides the Apex Court in the decision relied

upon by the courts below as well as in **Ganpat Ladha Vs. Shashikant Vishnu Shinde reported in AIR 1978 S.C. 955** has clearly held that it is the obligation of the tenant to continue to pay regularly till the final disposal of the proceeding and in that regard, there is no discretion left to the court, in case once default is committed by the tenant. It was held therein that:

> " *Thus S. 12(3)(a) of the Act makes it obligatory for the court to pass a decree when its conditions are satisfied as was pointed out by one of us (Bhagwati, J.) in Ratilal Balabhai Nazar Vs. Ranchodbhai Shankerbhai Patel AIR 1968 Guj 172. If there is statutory default or neglect on the part of the tenant, whatever may be its cause, the landlord acquires a right under S. 12(3)(a) to get a decree for eviction. But where the conditions of S.12(3)(A) are not satisfied, there is a further opportunity given to the tenant to protect himself against eviction. He can comply with the conditions set out in S. 12(3)(b) and defeat the landlord's claim for eviction. If, however, he does not fulfil those conditions, he cannot claim the protection of S 12(3)(b) and in that event,*

*there being no other protection available to him, a decree for eviction would have to go against him. It is difficult to see how by any judicial valour discretion exerciable in favour of the tenant can be found in S. 12(3)(b), even where the conditions laid down by it are satisfied, to be strictly confined within the limits prescribed for their operation. We think that Chagla C.J. was doing nothing less than legislating in Kalidas Bhavan's case (1958) 60 Bom LR 1359 (supra), in converting the provisions of S.12(3)(b) into a sort of discretionary jurisdiction of the Court to relieve tenants from hardship. The decisions of this court referred to above in any case, make the position quite clear that S.12(3)(b) does not create any discretionary jurisdiction in the court. It provides protection to the tenant on certain conditions and these conditions have to be strictly observed by the tenant who seeks the benefit of the section. If the statutory provisions do not go far enough to relieve the hardship of the tenant the remedy lies with the legislature. It is not in the hands of the courts."*

8. Further in **Mranalini B. Shah and another Vs. Bapalal M**ohanlal Shah repoprted in AIR 1980 S.C. 954,

it was held by the Apex Court that:

> *12. The above enunciation, clarifies beyond doubt that the provisions of clause (b) of Section 12(3) are mandatory, and must be strictly complied with by the tenant during the pendency of the suit or appeal if the landlord's claim for eviction on the ground of default in payment of rent is to be defeated. The word "regularly" in clause (b) of Section 12(3) has a significance of its own. It enjoins a payment or tender characterised by reasonable punctuality, that is to say one made at regular times or intervals. The regularity contemplated may not be a punctuality, of clocklike precision and exactitude, but it must reasonably conform with substantial proximity to the sequence of times or intervals at which the rent falls due. Thus, where the rent is payable by the month, the tenant must, if he wants to avail of the benefit of the latter part of cl.(b), tender or pay it every month*

*as it falls due, or at his discretion in advance. If he persistently defaults during the pendency of the suit or appeal in paying the rent, such as where he pays it all irregular intervals of 2 or 3 or 4 months - as is the case before us - the Court has no discretion to treat what were manifestly irregular payments, as substantial compliance with the mandate of this clause irrespective of the fact that by the time the judgment was pronounced all the arrears had been cleared by the tenant."*

Undoubtedly the tenancy in question was a monthly tenancy. Both the above quoted decisions, therefore, clearly justify the impugned order.

9. As no other ground is taken up to challenge the impugned judgment, there is no case made out for interference in the impugned judgment under Article 227 of the Constitution of India. Hence petition is dismissed. No order as to costs.

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